

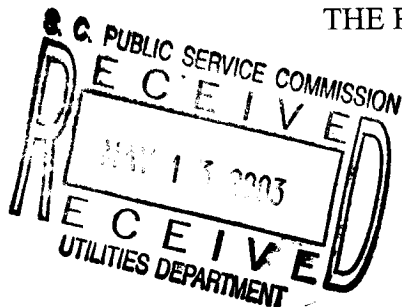
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## THE PUBLIC SERVICE COMMISSION OF

DOCKET NO. 97-239-C



IN RE: Proceeding to Establish Guidelines for an )  
Intrastate Universal Service Fund )  
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## RETURN TO PETITIONS FOR RECONSIDERATION

Bluffton Telephone Company, Inc., Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Inc., Home Telephone Company, Inc., Horry Telephone Cooperative, Inc., and PBT Telecom (“6 LECs”) respectfully submit this Return to the Petitions for Reconsideration of Order No. 2003-215 of the Public Service Commission of South Carolina (“Commission”) in the above-referenced docket filed by (1) the Consumer Advocate for the State of South Carolina (“Consumer Advocate”) and (2) AT&T Communications of the Southern States, Inc. (“AT&T”), Southeastern Competitive Carriers Association (“SECCA”), South Carolina Cable Television Association (“SCCTA”), MCImetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., and MCI WorldCom Network Services, Inc. (“MCI”) (all referred to herein collectively as the “Competitive Carriers”). The 6 LECs respectfully request that the Commission deny these Petitions for Reconsideration, and submit the following in support of their position.

### **Consumer Advocate Petition**

The Consumer Advocate contends that Commission Order No. 2003-215 suffers from the same legal infirmities set forth in the Consumer Advocate's appeal of the Commission's prior orders relating to the State USF, which is currently pending before the South Carolina Supreme Court. The Respondents in that appeal, South Carolina Telephone Association and the Commission, have fully responded to those alleged infirmities. The Circuit Court affirmed the Commission's prior orders in all respects, and the Supreme Court will decide those issues upon review of the Circuit Court Order.

The Consumer Advocate also raises a related issue in his petition for reconsideration. He alleges there is no evidence to support the Commission's finding that the amount of funding requested by the 6 LECs in this case does not exceed 1/3 of the company-specific State USF for each respective company. This is related to the Consumer Advocate's argument on appeal of the Commission's prior orders that the Commission did not properly size the State USF. As argued by both the Commission and the SCTA in the appeal, the Commission sized the fund, based on the statutory formula contained in S.C. Code Ann. § 58-9-280(E)(4), by determining the difference between the cost of providing basic local service for each carrier of last resort and the maximum amount they could charge for basic local service. For South Carolina Telephone Coalition members, including the 6 LECs, embedded cost studies were run and the resulting maximum State USF amounts were presented in the Revised Exhibit C to the Testimony of Douglas Meredith. These amounts were used by the Commission in sizing the State USF. The State USF has been sized, according to the statutory formula, and the Commission properly determined that the amount of additional funding requested by each of the 6 LECs did not exceed 1/3 of that LEC's company-specific State USF amount.

### **Competitive Carriers Petition**

The Competitive Carriers likewise challenge Commission Order No. 2003-215 on the same grounds as those contained in an appeal of the Commission's prior orders by two of the Competing Carriers<sup>1</sup> (see paras. 11-15 of Competitive Carriers Petition). The Competitive Carriers also raise issues in their petition for reconsideration that were raised by the Consumer Advocate in the pending consolidated appeal before the South Carolina Supreme Court (see para. 16 of Competitive Carriers Petition). Those matters have been decided by the Commission, the Commission's orders have been affirmed in all respects by the Circuit Court, and the Supreme Court will decide those issues upon review of the Circuit Court Order.

In addition to re-iterating issues that are pending on appeal, the Competitive Carriers raise several new issues. The issues raised, however, are simply more challenges to the way the Commission has determined to implement and operate the State USF. In fact, counsel for AT&T, SECCA, and SCCTA specifically stated on the record that he was not arguing that the 6 LECs had not done what was required of them under the Commission's prior orders. TR at 128-29. As counsel stated, he was raising these issues again "to protect the record [on appeal], and also to ask [the Commission] to look at it again." TR at 131. There is no reason for the Commission to look at these issues again. As noted in Order No. 2003-215, the Commission has been through years of hearings, beginning in August 1997, on this matter and has issued detailed and exhaustive orders in this case, some of which were appealed to the Circuit Court. Judge Kinard issued a detailed 44-page order in which he affirmed the Commission's orders and concluded there was substantial evidence in the record to support the Commission's decisions,

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<sup>1</sup> An appeal of certain of the Commission's prior orders was brought by SCCTA and SECCA. This appeal was consolidated with the Consumer Advocate's appeal and is pending before the Supreme Court of South Carolina.

and that the Commission had acted properly and in accordance with its statutory mandate, as well as in the public interest, in establishing and implementing the State USF.

Even if the Commission were to consider the issues the Competitive Carriers now raise, there is no reason to change the Commission's earlier determinations. In paragraphs 5 and 6 of their Petition, the Competitive Carriers raise issues relating to the size of the fund and the Commission's finding that the amount of funding requested by the 6 LECs in this case does not exceed 1/3 of the company-specific State USF for each respective company. As with the Consumer Advocate's similar argument, these issues relate to SECCA's and SCCTA's argument on appeal that the Commission has not properly sized the State USF. This contention is simply wrong, as discussed above and as detailed in the pleadings and briefs on appeal.

In paragraph 7 of their Petition, the Competitive Carriers argue that there is no evidence of the extent to which the rates to be reduced are providing implicit support for basic local exchange service. To the contrary, the Commission has sized the State USF based on the difference between the cost of providing basic local exchange service and the maximum amount that can be charged for such service. This defines the amount of support for basic local exchange service that is currently being derived from rates for other services offered by the carrier. The amount by which those other rates are priced above their respective cost is the amount of implicit support for basic local service built into those other rates. That is exactly what the State USF is intended to accomplish – to remove the implicit support built into other rates (i.e., the amount by which their price exceeds cost) and make it explicit so that it can continue to support basic local service.

In paragraphs 8 and 10 of the Petition, the Competitive Carriers raise a number of issues relating to the cost studies filed by the 6 LECs. These issues were considered by the

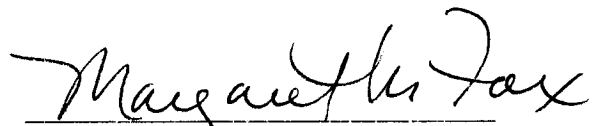
Commission and addressed in paragraph 10 of Order No. 2003-215. The Competitive Carriers have raised nothing in their Petition that would require a different conclusion by the Commission.

Finally, in paragraph 9 of their Petition, the Competitive Carriers take issue with the Commission's findings relating to stimulation of demand. The Commission properly concluded that taking stimulation of demand into account would be a difficult task and is not likely to yield accurate results. Demand stimulation is hypothetical at best, and any stimulation of minutes of use would likely be accompanied by an increase in expenses to meet the demand. Stating that the testimony on this issue is "patently incredible," the Competitive Carriers Petition goes on to state that "[d]emand would not decrease for a product whose price was decreased" and "[s]timulation in demand . . . will not affect those costs of the network that are not traffic-sensitive." These misstatements of fact have no basis in the record and, in fact, are contrary to the evidence of record and to logic. As pointed out by witnesses for the 6 LECs, the services sought to be reduced here are services that are faced with competitive alternatives. For example, area calling plans provide a large amount of support for basic local service. With the large access rate reductions that have recently taken place, these plans are no longer considered a bargain, and in many cases may be priced higher than other alternatives such as toll or wireless calling. TR at 25-26. Thus, there is a need to make the support in those rates explicit to ensure the continued availability of basic local exchange service at affordable rates. As testified to by witnesses for the 6 LECs, reducing rates for these services may or may not stimulate demand, depending on the nature of the calling plan and what other providers in the area are offering. TR at 92. For example, if toll rates are 5 cents per minute, who would continue to subscribe to an area calling plan that was priced at 8 cents per minute, even if the company reduced the rate to 6

cents per minute? Furthermore, the Competitive Carriers' claim that only traffic-sensitive costs would increase makes sense only if all expenses are considered traffic-sensitive. Stimulation in demand for calling often results in the need for more facilities to handle the increased calling. Any significant increase in demand would necessarily increase expenses.

WHEREFORE, for the reasons stated above, the 6 LECs respectfully request that the Commission deny the Petitions for Reconsideration filed by the Competitive Carriers (listed above) and the Consumer Advocate in this matter.

Respectfully Submitted,



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May 12, 2003

Columbia, South Carolina